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7 Attorneys for Defendant
8 VARIAN MEDICAL SYSTEMS, INC.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 UNIVERSITY OF PITTSBURGH OF THE
13 COMMONWEALTH SYSTEM OF HIGHER
14 EDUCATION d/b/a UNIVERSITY OF
15 PITTSBURGH, a Pennsylvania non-profit
corporation (educational),

16 Plaintiff,

17 v.

18 VARIAN MEDICAL SYSTEMS, INC., a
Delaware corporation,

19 Defendant.

Case No. CV 08-02973 MMC

**REPLY DECLARATION OF
MATTHEW H. POPPE IN SUPPORT
OF VARIAN'S MOTION TO
TRANSFER ACTION TO U.S.
DISTRICT COURT FOR WESTERN
DISTRICT OF PENNSYLVANIA**

Date: August 29, 2008
Time: 9:00 a.m.
Courtroom: 7, 19th Floor

1 I, Matthew H. Poppe, declare:

2 1. I am a partner in the law firm of Orrick, Herrington & Sutcliffe LLP (“Orrick”),
3 counsel of record for defendant Varian Medical Systems, Inc. (“Varian”) in this action and in
4 *University of Pittsburgh v. Varian Medical Systems, Inc.*, Case No. 2:07-cv-00491-AJS, in the
5 Western District of Pennsylvania (the “Penn. Case”). I am licensed to practice law in the State of
6 California. I have personal knowledge of the facts stated herein, except where otherwise stated,
7 and I could and would testify to those facts if called as a witness.

8 2. In March 2008, the court in the Penn. Case requested that each party submit a
9 letter to the court addressing that party’s views of the merits of the case in preparation for a
10 settlement conference to be conducted by the court. In response, Varian submitted a nine-page,
11 single-spaced letter.

12 3. Early in the case, Varian issued a subpoena to non-party inventor Andre Kalend.
13 We were informed by our process server that he refused to accept service, literally tossing the
14 subpoena back at the process server and appearing angry. Only later did UPitt’s counsel inform
15 us that they would represent Dr. Kalend and accept service on his behalf. Dr. Kalend refused to
16 make himself available for deposition until the last day of the discovery period, and he did not
17 produce any documents pursuant to the subpoena until the day before the close of discovery,
18 despite the fact that the subpoena called for the production of documents much earlier. Moreover,
19 he produced documents in California despite the fact that his deposition was occurring in West
20 Virginia. Later, Varian obtained a court order directing him to organize his documents in a more
21 orderly fashion. Varian also issued a subpoena to non-party inventor Charalambos Athanassiou.
22 Shortly before the scheduled date for his deposition, Varian was informed by UPitt’s counsel that
23 he would not appear for his scheduled deposition in Pittsburgh. Thereafter, UPitt’s counsel
24 informed us and the Court that Mr. Athanassiou was not responding to their messages. Only
25 later, after the close of discovery, did Dr. Athanassiou resurface and make himself available for a
26 deposition.

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1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct. Executed in Menlo Park, California on July 18, 2008.

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4 /s/ Matthew H. Poppe

5 Matthew H. Poppe
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the REPLY DECLARATION OF MATTHEW H. POPPE IN SUPPORT OF VARIAN'S MOTION TO TRANSFER ACTION TO U.S. DISTRICT COURT FOR WESTERN DISTRICT OF PENNSYLVANIA was served upon the University of Pittsburgh, through its counsel, via:

<u> X </u>	Hand-Delivery
<u> </u>	Facsimile
<u> </u>	First Class, US Mail, Postage Prepaid
<u> </u>	Certified Mail-Return Receipt Requested
<u> </u>	ECF Electronic Service
<u> </u>	Overnight Delivery

at the following addresses:

Rita E. Tautkus
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Dated: July 18, 2008

/s/ Matthew H. Poppe
Matthew H. Poppe